



SUPREME COURT OF GEORGIA

GEORGIA, LUMPKIN COUNTY  
CLERK OF SUPERIOR COURT  
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*Rita Harkins*  
RITA HARKINS, CLERK

**SECOND ORDER EXTENDING DECLARATION OF  
STATEWIDE JUDICIAL EMERGENCY**

FILED
Administrative Minutes
May 11, 2020
Thérèse S. Barnes, Clerk/Court Executive
SUPREME COURT OF GEORGIA

*Thérèse S. Barnes*

On March 14, 2020, in response to the COVID-19 pandemic, the Honorable Harold D. Melton, as the Chief Justice of the Supreme Court of Georgia, issued an Order Declaring Statewide Judicial Emergency pursuant to OCGA § 38-3-61. Due to the continuing statewide emergency, on April 6, 2020, the Order was extended until May 13, 2020. While the work of the courts in Georgia has gone forward on essential and critical matters, and most courts have continued some non-essential court operations, in particular by using technology to conduct proceedings remotely, most court facilities are not prepared to comply with social distancing and other public health requirements to safeguard the health of litigants, lawyers, judges, court personnel, and the public during extensive in-court proceedings or proceedings involving a large number of people. After consulting with the Judicial Council of Georgia and other judicial partners, and recognizing that most in-court proceedings compel the attendance of various individuals rather than allowing them to decide how best to protect their own health, it is hereby determined that the statewide judicial emergency Order should be extended, with some clarifications and modifications as well as directions regarding efforts to resume court operations in a manner that protects public health.

Accordingly, the Order Declaring Statewide Judicial Emergency, which would have expired on Wednesday, May 13, 2020, at 11:59 p.m., is further extended until Friday, June 12, 2020, at 11:59 p.m. All Georgia courts shall continue to operate under the restrictions set forth in that Order as extended, with the following clarifications, modifications, and directions. Where this order refers to "public health guidance," courts should consider the most specific current guidance provided by the federal Centers for Disease Control and Prevention (CDC), the Georgia Department of Public Health (DPH), and their local health departments.

129242



## 1. Guidance on Application of the Order

Included in the Appendix to this Order are several guidance documents that clarify the application of the Order in particular contexts: tolling of filing deadlines; tolling of statutes of limitations; deadlines and time limits defined by reference to terms of court; and the continued authority of grand juries impaneled prior to the issuance of the Order. Additional guidance documents may be posted on the AOC's website at <https://georgiacourts.gov/judicial-council/aoc/>. It should be noted, however, that as discussed in Section 6 below, judges are being granted authority on a case-specific basis to reimpose certain deadlines that would otherwise be tolled by the Order or establish new deadlines or schedules.

## 2. Prohibition on Jury Trial Proceedings and Most Grand Jury Proceedings

Current public health guidance recommends social distancing and other measures that make it impracticable for courts to protect the health of the large groups of people who are normally assembled for jury proceedings, including jury selection. Accordingly, until further order, all courts are prohibited from summoning new trial jurors and grand jurors and from conducting criminal or civil jury trials.

Grand juries that are already impaneled or are recalled from a previous term of court may meet to attend to time-sensitive essential matters, but these grand juries should not be assembled except when necessary and only under circumstances in which social distancing and other public health guidance can be followed.

As discussed below, efforts are being pursued to allow the safe resumption of jury trials. The clerks and court administrators of trial courts that conduct jury trials and convene grand juries will be provided sufficient notice of the resumption of jury proceedings to allow the complicated process of summoning potential jurors to be completed. Information about this issue will be provided to trial court clerks and court administrators.

### 3. Proceedings Conducted Remotely Using Technology

All courts should continue to use and increase the use of technology to conduct remote judicial proceedings as a preferred alternative to in-person proceedings, both to ensure that essential court functions are continued and to conduct non-essential proceedings to limit the backlog of such matters when the judicial emergency is terminated. Courts should understand and utilize the authority provided by the emergency amendments made to court rules on videoconferences and teleconferences.

Courts may compel the participation of litigants, lawyers, witnesses, and other essential personnel in remote judicial proceedings, including civil non-jury trials and other non-jury adjudicative proceedings, where allowed by court rules (including emergency amendments thereto). Such proceedings, however, must be consistent with public health guidance, must not impose undue burdens on participants, and must not be prohibited by the requirements of the United States or Georgia constitutions or applicable statutes or court rules.

In civil, criminal, and juvenile proceedings, parties may expressly consent in the record to remote proceedings not otherwise authorized and affirmatively waive otherwise applicable legal requirements. Courts must ensure the public's right of access to judicial proceedings and, unless affirmatively waived in the record, a criminal defendant's rights to confrontation and open courtrooms.

### 4. In-Court Proceedings; Development of Guidelines

Except for jury and grand jury proceedings as discussed in Section 2 above, courts have discretion to conduct essential and non-essential in-person judicial proceedings, but only in compliance with public health guidance and with the requirements of the United States and Georgia constitutions and applicable statutes and court rules, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and open courtrooms.



Before conducting extensive in-person proceedings, particularly in non-essential matters, each court should develop written guidelines as to how in-court proceedings generally and particular types of proceedings will be conducted to protect the health of litigants, lawyers, judges, court personnel, and the public. Guidelines should specify who should be admitted to the courthouse and courtroom and how public health guidance will be followed regarding such matters as health screening of court personnel and visitors, social distancing (including by capping the occupancy of courthouses, interior areas, and courtrooms based on their size), availability and use of personal protective equipment (PPE) by court personnel and visitors, and sanitization practices. Guidelines should provide for accommodations for high-risk individuals. Courts should consider the use of staggered, smaller proceedings to conduct proceedings involving many cases or participants, such as calendar calls and arraignments. Guidelines should be prominently posted at courthouse entrances and on court and government websites to provide advance notice to litigants, lawyers, and the public.

Support for the development of guidelines will be provided by the Judicial COVID-19 Task Force discussed in Section 7 below, as well as by the councils for each class of court. Courts of different classes that share courthouse facilities or operate in the same county should seek to coordinate their guidelines.

5. Discretion of Chief Judges to Declare More Restrictive Local Judicial Emergencies

Nothing in the Order Declaring Statewide Judicial Emergency as extended and modified limits the authority of the Chief Judge of a superior court judicial circuit under OCGA §§ 38-3-61 and 38-3-62 to add to the restrictions imposed by the statewide judicial emergency, if such additional restrictions are constitutional, necessitated by local conditions, and to the extent possible ensure that courthouses or properly designated alternative facilities remain accessible to carry out essential judicial functions. However, no court may disregard the restrictions imposed by the Order as extended and modified.

6. Discretion of Judges to Reimpose Deadlines in Specific Cases

After the date of this order, and with the exception of deadlines regarding jury trials and grand juries, judges are granted the following authority to reimpose deadlines set by statutes, rules, regulations, and court orders that have been suspended, tolled, or extended by the Order Declaring Statewide Judicial Emergency as extended and modified and to establish new deadlines and schedules. In pending or newly filed cases, a judge may reimpose or establish such deadlines on a case-by-case basis after considering the particular circumstances of the case, including any public health concerns and known individual health, economic, and other concerns regarding the litigants, lawyers, witnesses, and other persons who may be involved in the case. The judge must enter a written order in the record for the case identifying the deadlines that are being reimposed or established. Standing orders applicable to multiple cases and orders simply reimposing previous scheduling orders are not permitted. The judge should allow any party or other participant in a case to seek reconsideration of such an order for good cause shown.

Judges should in particular consider reimposing deadlines that do not require any or only insignificant in-person contact, such as deadlines for filing and responding to pleadings, motions, and briefs, written discovery in civil cases, scheduling of depositions that may be taken remotely or require few participants, and scheduling of hearings requiring only legal argument or few participants.

7. Judicial COVID-19 Task Force; Comments Solicited

A Judicial COVID-19 Task Force is hereby established to assist courts in conducting remote proceedings and in restoring more in-court proceedings, in particular jury trials and grand jury proceedings. The Task Force will include judges from the various classes of court and will obtain input from key stakeholders including the State Bar of Georgia, prosecutors and public defenders, civil plaintiff and defense attorneys, court clerks, sheriffs, and the public.

To assist in evaluating the effects of the Order Declaring Statewide Judicial Emergency as extended and modified, comments are



solicited from judges, lawyers, and the general public. Comments should be delivered in Word or PDF format by email to JCTFcomments@gasupreme.us.

#### 8. Professionalism

With regard to all matters in this challenging time, all lawyers are reminded of their obligations of professionalism. Judges are also reminded of their obligation to dispose of all judicial matters promptly and efficiently, including by insisting that court officials, litigants, and their lawyers cooperate with the court to achieve that end, although this obligation must not take precedence over the obligation to dispose of matters fairly and with patience, which requires sensitivity to health and other concerns raised by court officials, litigants and their lawyers, witnesses, and others.

#### 9. Notice Provisions

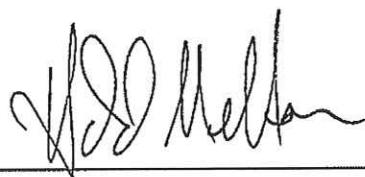
Notice will be provided as to the expected termination of the Order as extended and modified at least one week in advance to allow courts to plan for the transition to fuller operations.

The impact of COVID-19 varies across the state, and the level of response and adjustment will likewise vary among courts. Courts are strongly encouraged to make available to the public the steps they are taking to safely increase operations while responding to the COVID-19 pandemic. Recognizing that not all courts have a social media presence or website, the Administrative Office of the Courts will continue to post court-specific information as it becomes available on the AOC website at <https://georgiacourts.gov/covid-19-preparedness/>.

Pursuant to OCGA § 38-3-63, notice and service of a copy of this order shall immediately be sent to the judges and clerks of all courts in this State and to the clerk of the Court of Appeals of Georgia, such service to be accomplished through means to assure expeditious receipt, which include electronic means. Notice shall also be sent to the media, the State Bar of Georgia, and the officials and entities listed below and shall

constitute sufficient notice of the issuance of this order to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 11<sup>th</sup> day of May, 2020.



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Chief Justice Harold D. Melton  
Supreme Court of Georgia

Appendix

Guidance on Tolling of Filing Deadlines (March 27, 2020)

Guidance on Tolling of Statutes of Limitation (April 6, 2020)

Guidance on Deadlines and Time Limits Defined by Reference to Terms  
of Court (May 4, 2020)

Guidance on Grand Juries (May 4, 2020)

Further Guidance on Grand Juries (May 11, 2020)

cc:

Governor Brian P. Kemp  
Lt. Governor Geoff Duncan  
Speaker David Ralston  
State Bar of Georgia  
Administrative Office of the Courts  
Judicial Council of Georgia  
Council of Superior Court Clerks of Georgia  
Department of Juvenile Justice  
Criminal Justice Coordinating Council  
Council of Accountability Court Judges  
Georgia Commission on Dispute Resolution  
Institute of Continuing Judicial Education of Georgia  
Georgia Council of Court Administrators  
Chief Justice's Commission on Professionalism  
Judicial Qualifications Commission  
Association County Commissioners of Georgia  
Georgia Municipal Association  
Georgia Sheriffs' Association  
Georgia Association of Chiefs of Police  
Georgia Public Defender Council  
Prosecuting Attorneys' Council of Georgia  
Department of Corrections  
Department of Community Supervision  
Georgia Court Reporters Association  
Board of Court Reporting  
State Board of Pardons and Paroles  
Constitutional Officers Association of Georgia  
Council of Magistrate Court Clerks  
Council of Municipal Court Clerks

SUPREME COURT OF THE STATE OF GEORGIA  
Clerk's Office, Atlanta

I certify that the above is a true extract from the  
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

 , Clerk



## **Guidance on Tolling Filing Deadlines Under the Chief Justice's Order Declaring Statewide Judicial Emergency**

Atlanta Legal Aid has reported that there are varying interpretations of the tolling provision in the Chief Justice's March 14, 2020, Order Declaring Statewide Judicial Emergency, especially in the context of eviction proceedings. Simply stated, like all other non-constitutional filing deadlines, the time for filing an answer in an eviction proceeding is tolled by the declaration if the filing deadline date was after March 14, 2020, or after the date of any prior local or circuit-wide judicial emergency order applicable to the proceeding. For eviction or any other kind of proceeding, whatever amount of time remained before the filing was due prior to the date of the statewide declaration, or prior to any applicable local or circuit-wide order, will remain after the March 14, 2020, declaration has expired or is otherwise terminated. While questions regarding eviction proceedings prompted this guidance, this guidance is applicable to all proceedings and filing deadlines.

March 27, 2020

129250

## **Guidance on Tolling Statutes of Limitation Under the Chief Justice's Order Declaring Statewide Judicial Emergency**

Questions have arisen about how the tolling provision in the Chief Justice's Order of March 14, 2020, Declaring Statewide Judicial Emergency applies to statutes of limitation. Simply put, the tolling of a statute of limitation suspends the running of the period of limitation, but it does not reset the period of limitation. If the period of limitation for a particular cause of action commenced prior to March 14, 2020—that is, if the “clock” had started to run before the entry of the Chief Justice's order—the running of the period of limitation was suspended on March 14, and the running of the period will resume when the tolling provision of the March 14 declaration has expired or is otherwise terminated. If the event that triggers the running of a period of limitation occurred on or after March 14—that is, if the “clock” had not started to run before a statewide judicial emergency was declared—the period of limitation will not begin to run until the tolling provision of the March 14 declaration has expired or is otherwise terminated. In either circumstance, whatever time remained in the period of limitation as of March 14 will still remain when the tolling provision of the March 14 declaration has expired or is otherwise terminated.

April 6, 2020

129251



**Guidance on the Extension of Deadlines and Time Limits  
Defined by Reference to Terms of Court  
Under the Chief Justice's Order  
Declaring Statewide Judicial Emergency**

Questions have arisen about how the tolling provisions of the Chief Justice's Order Declaring Statewide Judicial Emergency (March 14, 2020) and Order Extending Declaration of Statewide Judicial Emergency (April 6, 2020) apply to deadlines and time limits that are defined by reference to terms of court. See, e.g., OCGA § 17-7-170 (statutory demands for speedy trial in noncapital cases); § 17-7-171 (statutory demands for speedy trial in capital cases); § 17-9-61 (motions in arrest of judgment); Hipp v. State, 293 Ga. 415, 416 (746 SE2d 95) (2013) (inherent authority of trial court to amend, correct, or revoke "its orders and judgments during the term at which they are entered") (citation omitted); Rubiani v. State, 279 Ga. 299, 299 (612 SE2d 798) (2005) (withdrawal of guilty pleas). With respect to these deadlines and time limits, any regular term of court that is interrupted—whether at the beginning of the term, in the middle of the term, or at the end of the term—by the statewide judicial emergency simply does not count in the calculation of the deadlines and time limits.

To illustrate the application of this principle, consider a court with terms beginning on the first day of January, March, May, July, September, and November, and suppose that the statewide judicial emergency that was declared on March 14 were lifted on May 13. In that court, the March and May terms—both of which were interrupted by the statewide judicial emergency—would not count toward the calculation of any deadline or time limit that is defined by reference to terms of court. As a result:

- If a demand for speedy trial in a capital case were timely filed on February 26, the January term of court—which was not interrupted by the statewide judicial emergency—would start the "clock," requiring the State to bring the case to trial no later than the end of the third regular term after the January term. But because the March and May terms would not count, the accused would not become entitled to a discharge and acquittal until after the

conclusion of the November term, assuming that jurors were qualified and available to try the accused in the July, September, and November terms.

- If an order were entered on March 5, and no appeal were taken, the court would have the power to amend, correct, or revoke its order through the end of the July term. Although the inherent authority of a trial court to amend, correct, or revoke its own judgment or order ordinarily expires at the end of the term in which the judgment or order was entered, the March and May terms would not count, and this authority would extend into the July term, the first term of court to begin after the expiration of the statewide judicial emergency.
- If a demand for speedy trial in a noncapital case were timely filed on May 15, the May term would not count as the first of the two terms in which the State would be allowed to bring the case to trial. The “clock” would not start running until the July term, and the accused would not become entitled to a discharge and acquittal until after the conclusion of the September term, assuming that jurors were qualified and available to try the accused in the July and September terms.

This is consistent with the understanding of the tolling provisions of the Chief Justice’s Orders as applied in other contexts. When the tolling provisions are applied to a deadline or time limit that is measured by reference to days (or to some unit of time, such as years, that is readily reducible to days), any day on which the statewide judicial emergency was in effect would not count toward such deadline or time limit. Similarly, when the tolling provisions are applied to a deadline or time limit that is measured by reference to statutory terms of court, any term in which the statewide judicial emergency was in effect would not count toward such deadline or time limit.

May 4, 2020

129253



**Guidance on the Continued Authority of Grand Juries  
Impaneled Prior to the Issuance of the  
Chief Justice's Order Declaring Statewide Judicial Emergency**

A question has arisen about whether a grand jury impaneled prior to the issuance of the Chief Justice's Order of March 14, 2020, Declaring Statewide Judicial Emergency may continue to serve beyond the term of court for which it was summoned and impaneled. The question reflects a recognition that, although the ongoing COVID-19 outbreak may render the summoning and impaneling of a new grand jury imprudent and impractical, there may be essential business that requires the attention of a grand jury and that cannot reasonably be delayed until after public health considerations permit the resumption of regular jury proceedings.

Generally speaking, the authority of a grand jury is limited to the term of court for which it was summoned and impaneled, and when that term comes to an end—whether by adjournment or by operation of law upon the commencement of the next regular term—the authority of the grand jury is at an end. See State v. Grace, 263 Ga. 220, 221 n. 5 (430 SE2d 583) (1993). See also Durden v. State, 299 Ga. 273, 276 (2) (b) (787 SE2d 697) (2016). And in general, a grand jury at one term of court cannot hold over and continue to serve at the next term of court. See Braxley v. State, 143 Ga. 658, 658 (2) (85 SE 888) (1915). See also Tompkins v. State, 138 Ga. 465, 465 (2) (75 SE 594) (1912). For some counties, however, there may be local laws that specifically authorize grand juries to hold over from one regular term to another. See, e.g., Brown v. State, 242 Ga. 602, 602 (1) (250 SE2d 491) (1978); Long v. State, 160 Ga. 292, 292 (1) (127 SE 842) (1925). And in the absence of locally specific authorization for a grand jury to hold over to a subsequent term, OCGA § 15-6-20 authorizes the superior court to adjourn a regular term early and hold a special term, at which the grand jury for a prior regular term can be recalled. See Haden v. State, 176 Ga. 304, 304 (3) (168 SE 272) (1933). See also Braxley, 143 Ga. at 658 (2).

Accordingly, if the term of court for which a grand jury was last impaneled has come to an end, and if there is essential business for the grand jury that cannot await the summoning and impaneling of a new grand jury, the superior court should first consider whether any local law

specifically authorizes the grand jury to hold over to the next regular term. If no such locally specific authorization exists, the superior court should consider an early adjournment of its regular term and the holding of a special term, at which the prior grand jury may be recalled to attend to essential business that cannot be deferred until after public health considerations permit the resumption of regular jury proceedings.

May 4, 2020



**Guidance on Grand Jury Proceedings  
Under the Chief Justice's Second Order  
Extending Declaration of Statewide Judicial Emergency**

The Chief Justice's Second Order Extending Declaration of Statewide Judicial Emergency (issued May 11, 2020) generally stays all grand jury proceedings, and it specifically prohibits the summoning and impaneling of new grand juries. The Order provides, however, that an existing grand jury—a grand jury already impaneled for the current term of court or recalled from a previous term of court<sup>1</sup>—may assemble when necessary to attend to “time-sensitive essential matters,” so long as the grand jury meets “under circumstances in which social distancing and other public health guidance can be followed.” This provision authorizes a district attorney, upon his or her own initiative or at the request of the foreperson of an existing grand jury, to assemble an existing grand jury if the district attorney: (1) determines that it is necessary for the grand jury to consider a matter that is essential to the administration of justice, the public health and welfare, the continuity of government, or the maintenance of civil order; (2) determines that a delay of such consideration by the grand jury until after the resumption of regular jury proceedings would pose a substantial risk of harm to the public interest; and (3) determines after consultation with the chief judge of the superior court and the sheriff that the grand jury can be assembled safely and in compliance with all applicable public health guidelines issued by the Centers for Disease Control and Prevention, the Georgia Department of Public Health, and the county public health department, including any guidelines for social distancing and the use of personal protective equipment. This provision is intended to be a limited exception to the general stay of all grand jury proceedings, and it is not intended to authorize an assembly of a grand jury to consider routine bills of indictment and other unexceptional matters.

May 11, 2020

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<sup>1</sup> For additional guidance on recalling a grand jury from a previous term of court, see *Guidance on the Continued Authority of Grand Juries Impaneled Prior to the Issuance of the Chief Justice's Order Declaring Statewide Judicial Emergency* (May 4, 2020) (available at [https://www.gasupreme.us/wp-content/uploads/2020/05/Guidance-on-Grand-Juries\\_Final.pdf](https://www.gasupreme.us/wp-content/uploads/2020/05/Guidance-on-Grand-Juries_Final.pdf)).